

Application Serial No. 10/769,833
Reply to Office Action of 22 June 2005

REMARKS

Claims 1-20 were pending in the case at the time of the Office Action. All claims stand rejected. Of these, claims 1, 17 and 19 are independent.

Claim 19 is amended above in a non-narrowing manner to clarify the claim.

Double Patenting

The Examiner has rejected claims 1-20 as unpatentable over claims 1-11 of US Patent 6,685,055, under the judicially-created doctrine of obviousness-type double patenting.

Recognizing that a terminal disclaimer will remedy this rejection, but also recognizing that the Examiner has presently rejected all claims as anticipated by or obvious over other art, the applicant respectfully declines to provide the disclaimer.

Once claims are indicated as being allowable but for the double patenting issue, a disclaimer will be provided.

Rejections under 35 USC §102(b) and 103(a)

The Examiner has rejected claims 1-4, 8, 10-12 and 15-19 as anticipated by US Patent 6,257,449 to Baerenwald ("Baerenwald '449"). The applicant respectfully traverses this rejection. Further, since the Examiner takes the further position that the remaining claims (5-7, 13, 14 and 20) are obvious over Baerenwald '449, the applicant will now address the independent claims as if rejected as anticipated by Baerenwald '449.

Claim 1

Rather than going through the Examiner's findings, which appear to be incomplete, the applicant will set out the limitations of claim 1 and try to read them onto Figs. 32-35, which is apparently where the Examiner made his analysis, based on the reference numerals cited from Baerenwald '449.

Baerenwald relates to a "closure apparatus", which applicant would identify as 20c in Baerenwald '449. Baerenwald '449 identifies 20c as a "fitment."

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Claim 1 requires "a base comprising a post." The Examiner identifies reference numeral 24c as the base and reference numeral 84c as the post. Although Baerenwald '449 calls 84c a "tamper indicator", applicant does not traverse this finding.

Claim 1 requires "a lever connected to said base." The Examiner identifies reference numeral 28c as the "lever." Baerenwald '449 calls 28c a "lever" and, based upon the operation of corresponding lever 28b in Figs 28-31, applicant would agree with the Examiner that Baerenwald '449 meets this limitation.

Claim 1 requires "a cover connected to said base, said cover comprising an annular structure that extends around said post." The Examiner identifies reference numeral 58c as the "cover" and this is consistent with the applicant's reading of Baerenwald '449. The Examiner indicates that reference numeral 90c acts as the "annular structure" that: 1) is a part of the cover 58c; and 2) "extends around" the post 84c. Applicant traverses this finding. First, 90c is identified by Baerenwald '449 as being an "upper portion" of a "deformable head 88c" of the "tamper indicator 84c." It is not at all clear how 90c qualifies as "annular" under the clear meaning of the term, which is "shaped like or forming a ring" (according to www.dictionary.com). Without being annular, it is also not clear how it can "extend around the post." Nothing in Baerenwald '449 Figs 32-36 seems to "extend around" post 84c. Directing attention to the present invention, structure 58 in Fig. 3 is clearly an "annular structure" that is a part of the cover 20 and extends around the post 56. Further, this annular structure 58 of the present invention "is adapted to detach from said cover when sufficient force is applied to said cover such that said annular structure remains on said post."

From the above, it is eminently clear to the applicant that Baerenwald '449 does not anticipate claim 1, under the plain meaning of the terms used. Without meeting each and every element of claim 1, Baerenwald '449 cannot anticipate any of the narrower claims dependent from claim 1, that is, claims 2-16. Accordingly, these claims are allowable.

Claim 17

As with claim 1, applicant will set out the limitations of claim 17 and try to read them onto Figs. 32-35, which is apparently where the Examiner made his analysis, based on the reference numerals cited from Baerenwald '449.

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As above, the preamble of claim 17 relates to a "closure apparatus", which applicant would identify as 20c in Baerenwald '449. Baerenwald '449 identifies 20c as a "fitment."

Claim 17 requires "a base comprising a post, said base further comprising a wall that defines an opening." Although the Examiner only identifies reference numeral 24c as the base and reference numeral 84c as the post, applicant will admit for purposes of this matter that Baerenwald '449 has these elements and that Baerenwald '449 shows the base with a wall 38 that defines an opening.

Claim 17 requires "a lever rotatably secured to said base such that an upward force on a rearward portion of said lever is adapted to cause said lever to rotate about an axis thereby disengaging a frontward portion of said lever from said wall of said base" The Examiner identifies reference numeral 28c as the "lever." Baerenwald '449 calls 28c a "lever" and, based upon the operation of corresponding lever 28b in Figs 28- 31, applicant would agree with the Examiner that Baerenwald '449 meets this limitation.

Claim 17 requires "a cover rotatably connected to said base such that said cover has an axis of rotation approximately perpendicular to said axis of rotation of said lever, said cover comprising an annular structure extending around said post; a cover connected to said base, said cover comprising an annular structure that extends around said post." The Examiner identifies reference numeral 58c as the "cover," but the Examiner makes absolutely no findings about how the cover is rotatably connected to the base. Note in Baerenwald '449 that the respective axes of rotation of the cover and the lever are *parallel*, not *perpendicular* to each other. Also, as argued above relative to claim 1, Baerenwald '449 discloses no "annular structure" that: 1) is a part of the cover 58c; and 2) "extends around" the post 84c.

Lacking the "annular structure", Baerenwald '449 cannot disclose the annular structure to be "adapted to detach from said cover when said cover is rotated away from said base such that said annular structure remains on said post."

From the above, it is eminently clear to the applicant that Baerenwald '449 does not anticipate claim 17, under the plain meaning of the terms used. Without meeting each and every element of claim 17, Baerenwald '449 cannot anticipate the narrower

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claim dependent from claim 17, that is, claim 18. Accordingly, that claim is also allowable.

Claim 19

As with claims 1 and 17, applicant will set out the limitations of claim 19 and try to read them onto Figs. 32-35, which is apparently where the Examiner made his analysis, based on the reference numerals cited from Baerenwald '449.

The preamble of claim 1 relates to a "container." Applicant admits that Baerenwald '449 discloses a container.

The Baerenwald '449 container admittedly has a substantially rectangular surface that has a closure apparatus secured to the substantially rectangular surface near an edge thereof.

Claim 19 requires that this closure apparatus have certain limitations. Some of these are disclosed above, such as the "base having an opening" and "a lever rotatably connected to said base."

Claim 19, however, has limitations that go beyond the requirements of claims 1 or 17, and, indeed, beyond the teaching of Baerenwald '449. Claim 19 requires that the lever have "a plane of rotation that is substantially perpendicular to the edge [of the substantially rectangular surface]", which is met by Baerenwald '449 and that the lever have "a proximal portion and a distal portion relative to said edge", which is also met by Baerenwald '449. However, and exactly opposite to Baerenwald '449, an upward force on the *distal* portion of the lever causes the *proximal* portion to depress into said substantially rectangular surface such that an opening is created in said substantially rectangular surface beneath said opening of said base. This provides a non-obvious advantage over anything taught by Baerenwald '449, where the portion of the lever proximal to the edge rotates upwardly. The Baerenwald '449 type of rotation obstructs flow of liquid in the container out through the opening.

From the above, it is eminently clear to the applicant that Baerenwald '449 does not anticipate claim 19, under the plain meaning of the terms used. Without meeting each and every element of claim 19, Baerenwald '449 cannot anticipate the narrower claim dependent from claim 19, that is, claim 20. Accordingly, that claim is also allowable.

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Conclusion

The Applicant respectfully submits that the present application is now in condition for allowance and such action is earnestly requested.

Respectfully submitted,

Dated: 24 SEP 2005

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